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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,965	03/15/2004	Roland Benitsch	ZTP01P14036	2550
24131	7590	12/19/2005	EXAMINER	
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			HANSEN, JAMES ORVILLE	
			ART UNIT	PAPER NUMBER
			3637	
DATE MAILED: 12/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/801,965	<b>Applicant(s)</b> BENITSCH ET AL.	
	<b>Examiner</b> James O. Hansen	<b>Art Unit</b> 3637	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS; WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 and 13 is/are allowed.
- 6) ☒ Claim(s) 1-6, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Applicant's arguments, filed September 22, 2005, with respect to the rejections of claims have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as detailed below.

### ***Drawings***

2. The drawings were received on September 22, 2005. These drawings are approved by the examiner.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4-6 & 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Mertz [U.S Patent No. 410,911]. Mertz (figures 1-3) teaches of a refrigerator, comprising: housing (A of refrigerator) having a cooled interior space; at least one drawer (C) disposed in the interior space capable of storing bottles; the at least one drawer having a frame with two opposite sides (fig. 3); and the at least one drawer having a plurality of rods (b) to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another (it is noted that the rods are deemed to be releasably mounted since the prior art does not expressly state that the rods are permanently affixed to the sides – the removal of just one rod would effectively define a “selectable

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distance”), wherein the rods have a cross section with an upwardly directed rounding and have a circular cross section (fig. 2). The rods are formed of wood as indicated by the crosshatched nomenclature as readily apparent to the examiner. The rods being mounted to the side elements (a) by a “plug-in” connection [the rods are plugged in or pushed into the elements] as best understood by the examiner. The drawer capable of storing bottles in either a reclining or horizontal position depending upon the type or size of the non-positively claimed bottle that may be stored within the drawer.

5. Claims 1-2 & 4-6 & 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Graves [U.S Patent No. 1,767,976]. Graves (figures 1-4) teaches of a refrigerator, comprising: housing (10) having a cooled interior space; at least one drawer (12) disposed in the interior space capable of storing bottles; the at least one drawer having a frame with two opposite sides (figs. 1-3); and the at least one drawer having a plurality of rods (20) to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another (it is noted that the rods are deemed to be releasably mounted since the prior art does not expressly state that the rods are permanently affixed to the sides – the removal of just one rod would effectively define a “selectable distance”), wherein the rods have a cross section with an upwardly directed rounding and have a circular cross section (fig. 2). The rods are formed of wood as indicated by the crosshatched nomenclature as readily apparent to the examiner. The rods being mounted to the side elements (depicted in fig. 3) by a “plug-in” connection [the rods are plugged in or pushed into the elements] as best understood by the examiner. The drawer capable of storing bottles in either a reclining or horizontal position depending upon the type or size of the non-positively claimed bottle that may be stored within the drawer.

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6. Claims 1 & 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Canio [U.S Patent No. 1,204,347]. Canio (figures 1-3) teaches of a refrigerator, comprising: housing (10) having a cooled interior space; at least one drawer (13) disposed in the interior space capable of storing bottles; the at least one drawer having a frame with two opposite sides (fig. 3); and the at least one drawer having a plurality of rods (23) to be releasably mounted parallel to and spaced apart from one another between the two opposite sides of the frame at selectable distances from one another (via the cam/lever arrangement). The drawer capable of storing bottles in either a reclining or horizontal position depending upon the type or size of the non-positively claimed bottle that may be stored within the drawer.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mertz. Mertz teaches applicant's inventive claimed structure as disclosed above, but does not specifically state that the rounding has a diameter of 20mm. However, the position is taken that it would have been an obvious matter of personal choice to vary the diameter of the rods depending upon the stock material available or personal preferences of the designer, since such a modification would have involved a mere

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change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graves. Graves teaches applicant's inventive claimed structure as disclosed above, but does not specifically state that the rounding has a diameter of 20mm. However, the position is taken that it would have been an obvious matter of personal choice to vary the diameter of the rods depending upon the stock material available or personal preferences of the designer, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

#### ***Allowable Subject Matter***

10. Claims 12-13 are allowed.

11. Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It is noted that if the limitations of claims 6-7 are incorporated into the base claim 1, these changes would essentially duplicate the claimed subject matter of now allowed claim 12.

#### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Keener and Rorrer et al., describe refrigerators with removable rod/bar structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
December 9, 2005